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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

8 WIRTZ BEVERAGE NEVADA BEER, INC.,
f/k/a MONARCH BEVERAGE COMPANY,
9 a Nevada corporation,

10 Plaintiff,

11 v.

12 PETER R. WIRTZ, W. ROCKWELL WIRTZ,
and DONALD F. HUNTER, as co-trustees to
13 THE WILLIAM W. WIRTZ TRUST, dated
September 2, 1999, as amended and restated,
14 and W. ROCKWELL WIRTZ, individually,

15 Defendants.
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CASE NO.: 2:11-cv-01513-GMN-(PAL)

**EMERGENCY MOTION TO STAY
FURTHER BRIEFING REGARDING CO-
TRUSTEE PETER R. WIRTZ'S MOTION
TO DISMISS THE COMPLAINT
PENDING RESOLUTION OF THE
MOTION TO REMAND**

17 Wirtz Beverage Nevada Beer, Inc., f/k/a Monarch Beverage Company ("Monarch"), by
18 and through its attorneys, and for its Emergency Motion to Stay Further Briefing Regarding Co-
19 Trustee Peter R. Wirtz's Motion to Dismiss the Complaint Pending Resolution of Monarch's
20 Motion to Remand (the "Motion"), alleges as follows:

21 1. On August 26, 2011, Monarch filed its Complaint in the District Court of Clark
22 County, Nevada.

23 2. On September 21, 2011, Co-Defendant and Co-Trustee Peter R. Wirtz ("Peter")
24 filed a Petition for Removal. Contemporaneously with the Petition for Removal, Peter filed a
25 Motion to Dismiss Monarch's Complaint.
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3. On September 28, 2011, coinciding with the filing of this Motion, Monarch filed a Motion to Remand this action back to the District Court of Clark County, Nevada. Monarch's Motion to Remand states that the Petition for Removal is defective because (a) Peter did not obtain the consent of his Co-Defendants, who are all parties-in-interest, before filing his Petition for Removal, and (b) the majority of the Co-Trustees of the William W. Wirtz Trust (the "Trust") did not authorize Peter to file the Petition for Removal, in contravention of the express terms of the Trust.

4. Monarch moves to stay briefing on Peter's Motion to Dismiss pending this Court's resolution of Monarch's Motion to Remand.

5. "It is well-settled that [the Court] must first resolve jurisdictional issues before [it] address[es] the merits of underlying claims." *U.S. v. Morales*, 239 Fed. Appx. 533, 534 (11th Cir. 2007). Further, a district court has discretionary power to stay proceedings in its own court. *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1105 (9th Cir. 2005). Indeed, district courts have inherent authority to stay proceedings before them. *Rohan ex rel. Gates v. Woodford*, 334 F.3d 803, 817 (9th Cir. 2003).

6. Here, the entry of a stay will conserve judicial resources because this Court's review of the Motion to Dismiss is likely to be unnecessary based upon the result of the Motion to Remand.

8. Therefore, Monarch respectfully requests that this Court stay briefing on Peter's Motion to Dismiss pending the Court's resolution of Monarch's Motion to Remand.

WHEREFORE, plaintiff Wirtz Beverage Nevada Beer, Inc., f/k/a Monarch Beverage Company respectfully requests this Court enter an Order:

1. Granting this Motion;

2. Entering a stay of Co-Trustee Peter R. Wirtz's Motion to Dismiss pending this Court's resolution of Monarch's Motion to Remand; and

Dated: September 28, 2011

/s/ *Andrew P. Gordon*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 28, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF filing system. I also certify that the foregoing document is being served this date on all counsel of record or *pro se* parties on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by the CM/ECF system or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing

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